

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-213475.2**DATE:** April 9, 1984**MATTER OF:** Miller Logging**DIGEST:**

The fact that a protester's comments on an agency report were erroneously sent to the contracting agency rather than GAO does not merit reopening a case which was closed because the protester did not send a timely indication of its continued interest in the protest to GAO.

Miller Logging requests that we reopen the file on its protest of the rejection of its bid for the purchase of timber as late by the Department of Agriculture, Forest Service. We closed our file because the protester did not reply to our request for a statement of its continued interest in the protest after receipt of the agency report on the matter. We do not believe it would be appropriate for us to reopen the case.

Miller states that it received our letter of December 13, 1983, advising that the agency report had been sent and that written comments or other written indication of continuing interest in the matter had to be filed with us within 10 working days after receipt of the report, or the protest would be dismissed. (This requirement is also contained in the amendment to our Bid Protest Procedures, 48 Fed. Reg. 1931 (1983) (to be codified at 4 C.F.R. § 21.3(d).) The protester asserts that "it seemed" from our letter that the Forest Service was the agency responsible for the administrative review of the protest and it therefore sent the comments to the Forest Service rather than to this Office. Not having heard from the protester within the time prescribed, we closed our file on the matter.

The Forest Service apparently received the comments within the required filing period, but it did not forward them here. (This is understandable since our procedures state that a copy of the protester's comments should be filed with the contracting agency.) Consequently, we did

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not receive the comments until Miller filed its request that the file be reopened. That was 6 weeks after the protester received our letter indicating that a statement of continued interest in the protest must be filed with us within 10 working days.

Miller's position is that it intended to comply with our filing requirements but that it had never filed a protest before, was unfamiliar with our Bid Protest Procedures, and found our 10-day letter confusing. We believe, however, that protesters who exercise reasonable care should have no difficulty in understanding our procedural requirements. Our letter of December 13 was written on General Accounting Office letterhead and specifically instructed the protester to "furnish us" with comments within 10 working days or the protest would be dismissed. This letter also provided the name and telephone number of the attorney assigned to the case who could provide information if requested. In addition, our published procedures clearly indicate that comments are to be filed with our Office and state the consequences of a failure to do so in a timely manner. Our earlier letter of October 31, 1983, in which we acknowledged receipt of Miller's initial protest, also informed the protester that the protest would be processed in accordance with those procedures, a copy of which it could obtain by contacting our Office.

We regard bid protests as serious matters which require effective and equitable procedural standards both so that parties have a fair opportunity to present their cases and so that protests can be resolved in a reasonably speedy manner. See Edron, Inc.--Reconsideration, B-207353.2, September 8, 1982, 82-2 CPD 207. Our procedures are intended to provide for expeditious consideration of objections to procurement actions without unduly disrupting the government's procurement process. Reopening the file on Miller's protest at this time would be inconsistent with this purpose. Therefore, the file will remain closed.

For the protester's benefit, we point out that it is not likely that it would have prevailed on the merits even if it had submitted comments to our Office in a timely manner. The sole issue in this case is whether Miller's hand-carried bid properly was rejected as late. The record shows that the bid opening officer decided that the 10:00 a.m. bid opening time had arrived before Miller's bid was received and the agency has submitted statements from

five individuals present at the bid opening--two competitors and three agency personnel--to establish that Miller's bid was received after 10:00 a.m. The protester's assertion that its bid was delivered at exactly 10:00 a.m. is supported only by its own statement. Even if we discounted the statements of the two other bidders as "biased," as the protester suggests, we would be left with statements by three Forest Service employees that Miller's bid was tendered late. In light of such a record, we could not conclude that the protester affirmatively proved that its bid was in fact received at the exact time set for the opening of bids. See Larry Carlson & Associates, Inc., B-211918, November 21, 1983, 83-2 CPD 599; MACETO, Inc., B-207878, September 30, 1982, 82-2 CPD 300.

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